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April 12, 2023

BY ECF

The Honorable Michael A. Hammer, U.S.M.J.
United States District Court for the District of New Jersey
Martin Luther King Federal Bldg. & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

Re: *Merck & Co., Inc., et al. v. Merck KGaA*, Civil Action No. 16-266(ES/MAH)

Dear Judge Hammer:

This firm, along with Blank Rome LLP, represents Defendant Merck KGaA in the above-referenced matter. Please see the attached letter from my partner, David Bernstein, who is lead trial counsel in this case. I am filing this letter on his behalf as he is admitted *pro hac vice* and is unable to file a letter directly on ECF.

Respectfully submitted,

/s/ Megan K. Bannigan

Megan K. Bannigan

cc (by ECF): All Counsel of Record

Encl.

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Dear Judge Hammer:

This firm, along with Blank Rome LLP, represents Defendant Merck KGaA in the above-referenced matter. We write to request a four-month adjournment of the dates set forth Your Honor's April 10, 2023 Order scheduling a final pretrial conference for July 6, 2023, and requiring that a proposed pretrial order be submitted on June 22, 2023 (ECF No. 218).

As Your Honor knows, I am lead trial counsel for Merck KGaA and have led our team since the time this case was filed. The reason for the request is that I have scheduled to take a personal leave of absence from my firm for the period from June 5 to September 29 in order to attend to an important personal matter that I have been putting off for some time. I will not be working during this period.

I expect to return to the firm as of October 2, 2023. We respectfully request that the deadline for the proposed pretrial order be adjourned until at least October 16, 2023, to allow me time to review and comment on the proposed order after my return, and for the final pretrial conference to be scheduled for a subsequent date, at the Court's convenience.

Given that Your Honor has advised the parties that a trial date is unlikely until 2025, we do not believe this adjournment will prejudice any of the parties. Indeed, given the voluminous record in this case, additional time to prepare the proposed pretrial order may be warranted.

Plaintiffs have informed us that they do not consent to this request. They proposed that the pretrial conference be held earlier, but as a practical matter, that would not be possible given that I will be in Asia in connection with the International Trademark Association annual meeting in Singapore and associated travel and client meetings from May 12-31, and that I will be in Denver on business on June 1-2. Ms. Bannigan, along with many of the world's leading trademark lawyers, also will be in Singapore for the INTA Annual Meeting in May, and thereafter she will be speaking at the Federal Judicial Center program on intellectual property law in Berkeley. Adding further difficulty to the proposed June 22nd deadline for the pretrial order, Ms. Bannigan will be on a long-scheduled family vacation from June 15-26. Plaintiffs also proposed that I be excused from attending the July 6th conference, but given that I am lead counsel and that we will have much to discuss with the Court, I would very much like to attend

The Hon. Michael A. Hammer, U.S.M.J.


2

April 12, 2023

the conference. Finally, Plaintiffs asserted to us that the proposed adjournment would prejudice them, but they have not explained how it would prejudice them given that expected trial date for this case is not until 2025.

Please let us know if you have any questions or would like the parties to appear for any reason. We thank Your Honor for your consideration of this request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Bernstein', with a stylized flourish at the end.

David H. Bernstein

cc (by ECF):

All Counsel of Record